

1 KEVIN R. RIVA, ESQ. (SBN- 186921)  
2 LAW OFFICES OF KEVIN R. RIVA,  
3 A PROFESSIONAL CORPORATION  
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LOS ANGELES, CA 90010  
4 TEL (213) 252-0505/FAX (213) 252-0500

5 Attorney for Plaintiff,  
6 HIGH POINT TEXTILE, INC.

7  
8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

10  
11 HIGH POINT TEXTILE, INC., a Corporation )  
12 Plaintiff, )  
13 vs. )  
14 JONDEN MANUFACTURING CO., INC. )  
15 a.k.a JONDEN; MARSHALLS; THE TJX )  
16 COMPANIES, INC.; and DOES 1 through 10, )  
17 Inclusive )  
Defendants. )

Case No.:

**CV08-05892 AHM (SHx)**

COMPLAINT FOR:

(1) COPYRIGHT INFRINGEMENT (28  
U.S.C. §§1331, 1338, et seq.); and  
(2) CONTRIBUTORY COPYRIGHT  
INFRINGEMENT

JURY TRIAL DEMANDED

18 Comes now, Plaintiff HIGH POINT TEXTILE, INC. alleging the following:

19 **INTRODUCTION AND OVERVIEW**

20 1. As shown by the design and garment attached as Exhibits to this Complaint, this  
21 is a clear liability copyright infringement case, wherein Defendants made garments featuring  
22 identical copies of Plaintiff's copyright protected designs and sold them to retail stores  
23 nationally. If successful, Plaintiff seeks recovery all remedies available under law including but  
24 not limited to its damages, all of Defendants profits and payment of Plaintiff's attorney fees and  
25 costs.

26 **THE PARTIES**

27 2. HIGH POINT TEXTILE, INC. is a corporation organized and existing under the  
28 laws of the State of California with its principal place of business at 17097 E. Martin Luther  
King Jr. Blvd., Los Angeles, CA 90058.

2008 SEP -9 PM 2:48  
CLERK U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIF.  
LOS ANGELES, CA

FILED

1           3.       JONDEN MANUFACTURING CO., INC. a.k.a. JONDEN which is a New York  
2 Corporation with its principal place of business at 1411 Broadway Suite 2409, New York, NY  
3 10018, and is in the business of designing and manufacturing, assembling and/or selling  
4 garments across the United States, including California.

5           4.       MARSHALLS is a California Corporation operated by THE TJX COMPANIES,  
6 INC., which is a Massachusetts Corporation, and is in the business of designing and  
7 manufacturing, assembling and/or selling garments through its retail stores under the "JONDEN"  
8 label across the United States, including California.

9           5.       The true names and capacities of Defendants DOES 1 through 10, inclusive, are  
10 unknown to Plaintiff, who therefore sues them by such fictitious names. When their true names  
11 and capacities are ascertained, Plaintiff will amend this complaint by inserting their true names  
12 and capacities herein. Plaintiff is informed and believes and thereon alleges that each of the  
13 fictitiously named Defendants are responsible in some manner for the occurrences herein  
14 alleged, and that Plaintiff's damages were proximately caused by such Defendants. At all times  
15 herein mentioned Defendants were the agents, employees, and/or servants of each and every  
16 other Defendant and were acting in the course and scope of such relationship with the consent of  
17 the co-defendants.

18           6.       Plaintiff is further informed and believes and thereon alleges that Defendants  
19 DOES 1 through 10, inclusive, created, assembled, distributed, manufactured and/or sold  
20 garments consist of the fabric printed with Plaintiff's copyrighted Subject Design (as herein after  
21 defined) or have otherwise contributed to the infringement.

22                               **JURISDICTION AND VENUE**

23           7.       This action for copyright infringement arises under the Copyright Act of 1976,  
24 Title 17 U.S.C. § 101 et seq., seeking damages, attorneys' fees, preliminary and permanent  
25 injunctive relief and an accounting, as well as damages and other relief based upon other claims  
26 related to the misappropriation of Plaintiff's intellectual property.

27           8.       This court has federal question jurisdiction under 28 U.S.C. §§ 1331, 1338(a) and  
28 (b).

///

///



1           9.       Venue is proper in this judicial district pursuant under 28 U.S.C. §1391(c) and  
2 1400(a) in that a substantial part of the acts or omissions giving rise to the claims herein occurred  
3 within this judicial district.

4           10.      The claims asserted herein arose in this judicial district and all Defendants do  
5 business in this judicial district.

6                   **CLAIMS RELATED TO DESIGN POLLIWAG FLOWER**

7           11.      Plaintiff is in the business of creating, developing, and selling original artwork of  
8 fabrics for use in garments, a time and labor intensive task.

9           12.      This is a clear-cut case supported by irrefutable evidence of copyright  
10 infringement.

11           13.      On April 27, 2006, Plaintiff acquired a registration number from the U.S. Patent  
12 Copyright Office for his design entitled "Polliwag Flower" which was assigned the registration  
13 number VA 1-357-328. A copy of the registration certificate is attached hereto as Exhibit A.

14           14.      Plaintiff displays his copyrighted and proprietary designs. Plaintiff maintains a  
15 showroom available to potential clients such as garment manufacturers and wholesalers,  
16 retailers, textile converters, and independent designers. All of the displays show that the Plaintiff  
17 owns the copyright on the design by labeling each design with a designation number.

18           15.      Plaintiff is informed and believes and thereon alleges that the Defendants,  
19 including DOES 1 through 10 Defendants, their clients and suppliers and each of them, had  
20 access to Plaintiff's designs through Plaintiff's display in the showroom, and through others,  
21 who wrongfully created copies, including the wrongfully created copies by Defendants as herein  
22 alleged.

23           16.      Plaintiff found and purchased garments comprised of the fabric bearing the  
24 Plaintiff's design entitled "Polliwag Flower" at a MARSHALLS' retail store in Puente Hills with  
25 the label indicating that they were manufactured by JONDEN. A copy of the infringing garment  
26 used at these various retail stores is attached hereto as Exhibit B.

27 ///

28 ///

1           17. Plaintiff has demanded from Defendants to cease and desist from all sales and  
2 manufacturing of garments consisting of the incorporated design Polliwag Flower, and to cease  
3 and desist from printing the copyrighted design without Plaintiff's consent.

4           18. Defendants have violated Plaintiff's rights as the copyright proprietor of the  
5 Subject Design by failing and refusing to comply with Plaintiff's demand to cease and desist  
6 from their infringement. Defendants have willfully, intentionally, and maliciously disregarded  
7 Plaintiff's rights, and continue in solely pecuniary interest to manufacture and/or sell garments  
8 comprised of the copyrighted design, which were made without the Plaintiff's consent.

9                           **FIRST CAUSE OF ACTION**

10                          **COPYRIGHT INFRINGEMENT**

11                          **(Against Each and Every Defendant)**

12           19. Plaintiff re-alleges and incorporates herein by reference paragraphs 1 through 18,  
13 inclusive, as though fully set fourth herein.

14           20. Plaintiff is informed and believes and thereon alleges that Defendants, and each of  
15 them, had accessed to the Subject Design, including without limitation: Plaintiff's showroom,  
16 illegal copies, samples from Plaintiff, and/or their customers and/or suppliers.

17           21. Defendants, and each of them, infringed Plaintiff's copyright by copying the  
18 Subject Design and by producing, distributing, and selling fabric and/or garments incorporating  
19 the design without the Plaintiff's consent.

20           22. Plaintiff is informed, and believes, and thereon alleges that Defendants have  
21 further infringed Plaintiff's copyright by producing derivative works from Plaintiff's Subject  
22 Design Polliwag Flower without the Plaintiff's consent and by producing and distributing  
23 garments using the derivative work based on the Subject Design Polliwag Flower that solely  
24 belongs to Plaintiff.

25           23. Plaintiff is informed, and believes, and thereon alleges that Defendants, and each  
26 of them, if not directly are liable for the infringement of the Plaintiff's copyrighted Subject  
27 Design, and are all liable for said infringements because Defendants had the right and ability to  
28 ///



1 supervise the infringing conduct and because they had a direct financial interest in the infringing  
2 conduct.

3 24. Plaintiff has suffered and continues to suffer substantial damages to his business  
4 that were proximately caused by Defendants refusal do cease all infringing acts, in the form of  
5 diversion of trade, loss of income and profits, and a dilution of the value of its rights.

6 25. The acts of copyright infringement on behalf of Defendants, and each of them,  
7 have obtained indirect and direct profits they would not have otherwise realized, but for the  
8 infringement of Plaintiff's copyrighted Subject Design Polliwag Flower. Plaintiff is entitled to  
9 recover disgorgement of each and every Defendant's profit directly and indirectly attributed to  
10 Defendants infringement of the Subject Design. Due to the immense scope and extent of the  
11 infringement of the Subject Design by Defendants and Defendants as yet unidentified, the  
12 amount of Defendants' profits cannot be presently ascertained or estimated.

13 26. Plaintiff is informed and believes and thereon alleges that Defendants continue to  
14 infringe the copyright in the Subject Design.

15 **SECOND CAUSE OF ACTION**

16 **CONTRIBUTORY COPYRIGHT INFRINGEMENT**

17 **(Against Each and Every Defendant)**

18 27. Plaintiff re-alleges and incorporates herein by reference paragraphs 1 through 26,  
19 inclusive, as though fully set forth herein.

20 28. Plaintiff is informed, and believes, and thereon alleges that Defendants, and each  
21 of them, used, sold, and/copied the Plaintiff's copyright Subject Design Polliwag Flower without  
22 Plaintiff's consent.

23 29. Plaintiff is informed and believes and thereon alleges that Defendants, each of  
24 them, infringed Plaintiff's Subject Design for their own profit and advantage by participating  
25 aiding and abetting in, and profited from, the copying of the Subject Design Polliwag Flower.

26 30. Defendants copied or aided and assisted in the copying of the Subject Design  
27 Polliwag Flower without the consent of the Plaintiff, which is considered an infringement of  
28 Plaintiff's copyright.

31. Plaintiff has suffered and continues to suffer substantial damages to his business that were proximately caused by Defendants refusal do cease all infringing acts, in the form of diversion of trade, loss of income and profits, and a dilution of the value of its rights.

32. The acts of copyright infringement on behalf of Defendants, and each of them, as alleged above and the continuing infringement of the copyright Subject Design Polliwag Flower have obtained indirect and direct profits they would not have otherwise realized, but for the infringement of Plaintiff's copyrighted Subject Design Polliwag Flower. Plaintiff is entitled to recover disgorgement of each and every Defendant's profit directly and indirectly attributed to Defendants infringement of the Subject Design. Due to the immense scope and extent of the infringement of the Subject Design by Defendants and Defendants as yet unidentified, the amount of Defendants' profits cannot be presently ascertained or estimated.

33. Defendants have failed and refused, and still fail and refuse to comply with Plaintiff's demand to cease and desist from their infringement. Defendants have willfully, intentionally, and maliciously disregarded Plaintiff's rights, and continue in solely pecuniary interest to manufacture and/or sell garments comprised of the copyrighted design, which were made without the Plaintiff's consent.

#### PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

#### ON THE FIRST AND SECOND CAUSE OF ACTION:

1. That Defendants, and each of them and their respective agents and servants be enjoined from infringing Plaintiff's copyright in any manner.

2. That the Plaintiff be awarded all the profits of Defendants, and each of them, plus all losses of Plaintiff, the exact sum to be proven at the time of trial, or, if elected before final judgment, statutory damages, as available under the Copyright Act, 17 U.S.C. §101 et seq.;

3. That Plaintiff be awarded its attorney's fees as available under the Copyright Act, 17 U.S.C. §101 et seq.;

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1           4.       That Defendants, and each of them, account to Plaintiff for their profits and any  
2 damages sustained by Plaintiff arising from the foregoing acts of infringement.

3           5.       That Plaintiff be awarded pre-judgment interest as allowed by law.

4           6.       That Plaintiff be awarded the costs of suit; and

5           7.       For such other and further relief as the court may deem proper.

6  
7 DATED: September 9, 2008

LAW OFFICES OF KEVIN R. RIVA,  
A PROFESSIONAL CORPORATION

8  
9 By: Kevin R. Riva  
10 Kevin R. Riva, Esq.  
11 Attorney for Plaintiff  
H.P. Textile, Inc.

12                               **DEMAND FOR JURY TRIAL**

13           Plaintiff hereby demands a trial by jury in this Action pursuant to F.R.C.P.38 and the  
14 seventh Amendment of the Constitution.

15  
16 Dated: September 9, 2008

LAW OFFICES OF KEVIN R. RIVA  
A PROFESSIONAL CORPORATION

17  
18 By: Kevin R. Riva  
19 Kevin R. Riva, Esq.  
20 Attorney for Plaintiff  
H.P. Textile, Inc.  
21  
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## **Exhibit A**

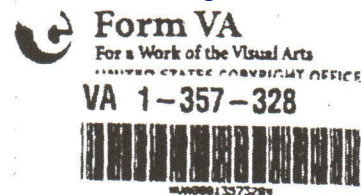




This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

*Marybeth Peters*

Register of Copyrights, United States of America



EFFECTIVE DATE OF REGISTRATION

*Apr - 27 2006*  
Month Day Year

LATE CONTINUATION SHEET.

NATURE OF THIS WORK ▼ See instructions

Title of This Work ▼

1

*Polliwag Flower*

Previous or Alternative Titles ▼

Publication as a Contribution If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: Volume ▼

Number ▼

Issue Date ▼

On Pages ▼

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH  
Year Born ▼ Year Died ▼

2

*a High Point Textile, INC*

Was this contribution to the work a "work made for hire"?

☒ Yes  
☐ No

Author's Nationality or Domicile  
Name of Country

OR { Citizen of *U.S.A.*  
Domiciled in *U.S.A.*

Was This Author's Contribution to the Work

Anonymous? ☐ Yes ☒ No  
Pseudonymous? ☐ Yes ☒ No

If the answer to either of these questions is "Yes," see detailed instructions.

Nature of Authorship Check appropriate box(es). See instructions

- |   |   |   |
|---|---|---|
| <input type="checkbox"/> 3-Dimensional sculpture          | <input type="checkbox"/> Map            | <input type="checkbox"/> Technical drawing  |
| <input checked="" type="checkbox"/> 2-Dimensional artwork | <input type="checkbox"/> Photograph     | <input type="checkbox"/> Text               |
| <input type="checkbox"/> Reproduction of work of art      | <input type="checkbox"/> Jewelry design | <input type="checkbox"/> Architectural work |

Name of Author ▼

Dates of Birth and Death  
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?

☐ Yes  
☐ No

Author's Nationality or Domicile  
Name of Country

OR { Citizen of \_\_\_\_\_  
Domiciled in \_\_\_\_\_

Was This Author's Contribution to the Work

Anonymous? ☐ Yes ☐ No  
Pseudonymous? ☐ Yes ☐ No

If the answer to either of these questions is "Yes," see detailed instructions.

Nature of Authorship Check appropriate box(es). See instructions

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> 3-Dimensional sculpture     | <input type="checkbox"/> Map            | <input type="checkbox"/> Technical drawing  |
| <input type="checkbox"/> 2-Dimensional artwork       | <input type="checkbox"/> Photograph     | <input type="checkbox"/> Text               |
| <input type="checkbox"/> Reproduction of work of art | <input type="checkbox"/> Jewelry design | <input type="checkbox"/> Architectural work |

3

Year in Which Creation of This Work Was Completed

*2006*

This information must be given ONLY if this work has been published.

Date and Nation of First Publication of This Particular Work

Complete this information ONLY if this work has been published. Month *03* Day *15* Year *2006*  
*U.S.A.*

4

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼

*High Point Textile, INC*  
*2000 S. Santa Fe Ave, Vernon, CA 91354*

Transfer If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

APPLICATION RECEIVED

*APR 27 2006*

ONE DEPOSIT RECEIVED

*APR 27 2006*

TWO DEPOSITS RECEIVED

FUNDS RECEIVED

DO NOT WRITE HERE  
OFFICE USE ONLY



EXAMINED BY *WBM*

FORM VA

CHECKED BY

☐ CORRESPONDENCE  
 Yes

 FOR  
 COPYRIGHT  
 OFFICE  
 USE  
 ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

☐ Yes ☒ No If your answer is "Yes," why is another registration being sought? (Check appropriate box.) ▼
a. ☐ This is the first published edition of a work previously registered in unpublished form.b. ☐ This is the first application submitted by this author as copyright claimant.c. ☐ This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number ▼

Year of Registration ▼

DERIVATIVE WORK OR COMPILATION Complete both space 6a and 6b for a derivative work; complete only 6b for a compilation.  
a. Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. ▼
 a. See instructions  
 before completing  
 this space.

b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.  
Name ▼ Account Number ▼

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/ZIP ▼

 Dong W SHIN  
 2900S, SANTA FE AVE, Vernon, CA 90058

Area code and daytime telephone number

923) 585-1199

Fax number

(923) 585-1199

Email

CERTIFICATION\* I, the undersigned, hereby certify that I am the

check only one ▶

☐ author☐ other copyright claimant☒ owner of exclusive right(s)☐ authorized agent of

Name of author or other copyright claimant, or owner of exclusive right(s) ▲

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

Dong W. Shin

Date 4/24/06.

Handwritten signature (X) ▼

*Dong W. Shin*

Certificate will be mailed in window envelope to this address:

Name ▼

Dong W. Shin

Number/Street/Apt ▼

2900 S. Santa Fe Ave.

City/State/ZIP ▼

Vernon, CA 90058

## YOU MUST:

- Complete all necessary spaces
- Sign your application in space 8

## SEND ALL 3 ELEMENTS IN THE SAME PACKAGE:

1. Application form
2. Nonrefundable filing fee in check or money order payable to Registrar of Copyrights
3. Deposit material

## MAIL TO:

 Library of Congress  
 Copyright Office  
 101 Independence Avenue, S.E.  
 Washington, D.C. 20559-6000

 This fee subject to change. For current fee, consult the Copyright Office website at [www.copyright.gov](http://www.copyright.gov), write the Copyright Office, or call (202) 707-9000.



## **Exhibit B**







Kevin R. Riva, Esq. (SBN- 183321)  
 Law Offices of Kevin R. Riva  
 3055 Wilshire Boulevard, Suite 900  
 Los Angeles, California 90010  
 TEL: (213) 252-0505/ Fax: (213) 252-0500

**UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA**

HIGH POINT TEXTILE, INC., a Corporation

Plaintiff(s)

v.

JONDEN MANUFACTURING CO., INC. a.k.a  
 JONDEN; MARSHALLS; THE TJX COMPANIES,  
 INC.; and DOES 1 through 10. Inclusive  
 Defendant(s)

CASE NUMBER:

CV-

**NOTICE OF LAWSUIT AND REQUEST  
 FOR WAIVER OF SERVICE OF SUMMONS**

This is to notify you that a lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. It has been filed in the United States District Court, Central District of California, ☒ Western Division ☐ Southern Division ☐ Eastern Division, and has been assigned case number: \_\_\_\_\_

This is not a formal summons or notification from the Court, but rather my request, pursuant to Federal Rules of Civil Procedure 4(d), that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the waiver within 30 days after the date designated below as the date on which this Notice and Request is sent. Enclosed is a self-addressed, stamped envelope (or other means of cost-free return) for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver, it will be filed with the Court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except that you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent (or before 90 days from that date if your address is not in any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the Court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, **please read the statement concerning the duty of parties to waive the service of the summons, which is set forth at the foot of the waiver form.**

I (We) affirm that this request is being sent to you on behalf of the plaintiff, this 9 day of September, 2 008

Kevin R. Riva

Signature of Plaintiff  
 (or counsel representing Plaintiff)

**NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS**